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No. 48

In the Supreme Court of the United States

October Term, 1962

[redacted]

Petitioner,

v.

[redacted]

Respondent.

[redacted]

BRIEF FOR THE RESPONDENT IN OPPOSITION

[redacted]

[redacted]
[redacted]
[redacted]

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CITATIONS

Cases:

Commissioner v. *Gillette Motor Co.*, 364 U.S. 130 4
Corn Products Co. v. *Commissioner*, 350 U.S. 46 4

Statutes:

Internal Revenue Code of 1954 (26 U.S.C. 1958 ed.):

Sec. 1221 2

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 934

HELEN D. MILLER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 4-28) are reported at 35 T.C. 631. The opinion of the Court of Appeals (Pet. App. 15-22) is reported at 299 F. 2d 706.

JURISDICTION

The judgment of the Court of Appeals was entered on February 6, 1962. (Pet. App. 23.) The petition for

a writ of certiorari was filed on May 4, 1962. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

Whether the proceeds received by the taxpayer under a contract authorizing a motion picture about her late husband, Glenn Miller, were correctly treated as ordinary income rather than as capital gain.

STATUTES INVOLVED

Internal Revenue Code of 1954 (26 U.S.C. 1958 ed.):

SEC. 1221. CAPITAL ASSET DEFINED.

For purposes of this subtitle, the term "capital asset" means property held by the taxpayer * * *

* * * *

STATEMENT

The taxpayer is the widow of Glenn Miller, a popular band leader who died in 1944. (R. 5-6.) The taxpayer has continued to exploit his music, recordings and name in numerous ways since his death. (R. 6-8, 15-18.)

In 1952 the taxpayer entered into a contract with Universal Pictures Company, Inc., under the terms of which she granted to Universal "the exclusive right to produce, release, distribute and exhibit * * * one or more photoplays based upon the life and activities of Glenn Miller throughout the world." (R. 45.) Universal produced a successful motion picture, "The Glenn Miller Story," and, pursuant to the contract,

paid the taxpayer $409,336.24 in 1954, of which she paid her attorney one-third. (R. 15.)

The taxpayer contends that her contract with Universal accomplished the sale of a "capital asset," and that the proceeds are taxable as long-term capital gain. The courts below rejected this contention, holding the proceeds taxable as ordinary income.

ARGUMENT

The taxpayer makes the admittedly novel contention that there is an exclusive "property" interest in the public life of a public figure, separate from the actual products of his work, which can be acquired by his heirs (in this case his widow) by bequest or inheritance, and which they can in turn transfer, by sale in this case, and presumably, by will. She also contends that this exclusive "property" is a capital asset, so that when she makes a transfer of it, or of part of it, payments received by her are taxable as capital gain. The court below rejected these contentions.

In her petition for a writ of certiorari the taxpayer does not assert any direct conflict with the decisions of any other appellate court or with those of this Court. Indeed, her argument is that the court below has followed too blindly the decisions and opinions of this Court. (Pet. 4-5.) Nor does the petition show any general importance of this case in the interpretation and administration of the revenue laws, except that it would request this Court to admonish the federal courts to be more venturesome in discovering new common-law concepts of property (Pet. 3, 7-9),

and then, contrary to the warnings of this Court's recent decisions (*Corn Products Co.* v. *Commissioner*, 350 U.S. 46, 52; *Commissioner* v. *Gillette Motor Co.*, 364 U.S. 130, 134-135), to classify these new types of "property" as capital assets.

Whatever the academic interest of these contentions may be, the decision below is clearly one which does not merit the time and attention of this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JUNE, 1962